United Nations A/HRC/37/NGO/124

General Assembly

Distr.: General
12 February 2018

English only

**Human Rights Council**
**Thirty-seventh session**
26 February-23 March 2018
Agenda item 3
**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

# Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-02095(E)
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# BANGLADESH: Law on torture is useless in a broken justice mechanism

The Asian Legal Resource Centre (ALRC) has repeatedly raised the issues relating to Bangladesh's torturous and coercive law-enforcement system coupled with a broken down justice mechanism in place.

Bangladesh is a country where torture is institutionalised. The notion of law-enforcement does not exist without the use of torture at the core of its functionality. Crime investigation and torture are synonymous. Torture has relations with the chain of corruption within the policing system as well as the political desperation. The influential political, bureaucratic and financial elites keep the police involved in torture so that the practice helps gaining their desired benefits. Thus, they encourage the police, which carry the colonial torturous legacy, to continue torture in exchange of administrative blessings and financial proceeds as bribes.

The institutionalised practice of torture and the political dependency on such torturous system has made Bangladesh a 'police state' in the post 'war on terror' era. The police, along with other external and internal stakeholders, dominate the process of determining the fate of politics and democracy in Bangladesh. The situation has reached to such a height that the police have been seen dictating voters whom to cast their votes.

Bangladesh's National Parliament enacted the "*Torture and Custodial Death (Prohibition) Act-2013*[1]" on 25 October 2013. Since the adoption of the law, the incumbent government has not used the law. Less than ten cases of torture have been registered since the law was enacted. Among the registered cases the investigation has not led to any prosecution in more than four years. In contrast, numerous incidents of torture routinely occur throughout the country.

The Bangladesh Police have been insisting the government to amend the anti-torture law so that the perpetrators of the State agents do not suffer any problem, in case the law is ever used assertively. For successive years the police officials have been demanding amendment to the Act Number 50 of 2013. The latest instance is of 8 January 2018 when Prime Minister Sheikh Hasina was attending the Annual Police Week programme. A Police Inspector named Forman Ali demanded to the Premier to amend the Torture and Custodial Death (Prohibition) Act – 2013. Inspector Forman reportedly said,

> "*Even if someone dies in custody from psychological stress, the police are being blamed for it. It is difficult to get a confession from a criminal unless the person is pressured psychologically. As cases filed under this Act are non-bailable, a police official will not be able to get bail if accused in a false case.*"

Replying to Forman Ali, the Prime Minister said, "*I cannot comment on the law itself, but we will consider the possibility of amending the Act.*"[2]

The Prime Minister's assurance to the police about 'considering the possibility of amending' the law further proves the government's hollow commitment to provide justice to the victims of torture. It also clearly shows that the Prime Minister owes to the police for their torturous actions.

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1 Bangladesh's *Torture and Custodial Death (Prohibition) Act-2013*, an unofficial English translation can be accessed from the website of Asian Human Rights Commission: http://www.humanrights.asia/countries/bangladesh/countries/bangladesh/laws/legislation/Torture-CustodialDeath-ActNo50of2013-English.pdf/

2 Dhaka Tribune, 11 January 2018, *Police want amendment of custodial death prevention act*, last accessed on 2 February 2018: http://www.dhakatribune.com/bangladesh/law-rights/2018/01/11/police-want-amendment-custodial-death-prevention-act/

The given condition of political patronage by the highest governmental authority crimes like knee-capping in police custody are increasing in Bangladesh. Numerous victims have been surviving with permanent disability as their limbs were amputated due to lack of adequate medical treatment. Many are languishing in prisons as the police fabricated criminal cases against them for suppressing the stories.

Bangladesh's justice institutions characteristically contribute to the process of nourishing the torturous and coercive law-enforcement system. The Judiciary – from the Magistracy to the Supreme Court – do not provide remedies to victims of torture, kneecapping, and of other gross abuses of human rights. Rather, the Sub-ordinate Judiciary often orders that the detainees be sent to "police remand" for further "interrogation" responding to the wish of the police, even though it is nationally known that "remand" is synonymous with "torture" in police custody.

Securing judicial remedies from the High Court Division and Appellate Division of the Supreme Court of Bangladesh is unaffordable to most of the victims who are financially poor. A few gets minimum amount of judicial remedies, subject to the identities of the petitioners and their legal representatives before the Courts. The torture victims, having association with opposition parties and not being represented by the pro-government high-profile lawyers, concede with lesser chance of getting remedies than others who can afford it. In recent years, the pro-opposition defendants get remedies under harsher conditions imposed by the Courts, if any remedy is made available to them. Extreme forms of politicisation of the judiciary throughout the process of recruitment, postings, and elevations have created this circumstance.

The Judiciary is not even ignorant about the behaviour and practice of the police. The judges of all branches know very well that the police, as the controller of the complaint mechanism, do not register complaints that allege torture, extrajudicial executions, or enforced disappearance, as the allegations are against their colleagues. It is also known to everyone that if any complaint is registered with the Magistrate's Court, the police – who are the statutory investigators of criminal cases – protect their colleagues in exchange of bribes. However, the Judiciary prefers turning a blind eye to the need of holding a fair trial.

The victims of torture do not get access to the complaint mechanism. There is no guarantee of credible investigation of the crime of torture. Subsequently, the question of prosecution cannot be imagined. The Judiciary as a whole complies with the wish of the police ignoring the condition and requirements of the victims of torture. The whole justice mechanism and the government together makes the anti-torture law a useless document, which has never been used to uphold justice since the enactment.

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has never been invited to visit Bangladesh. Reminder should be sent to government about the pending invitation for country visit. The UN Human Rights Council requires re-examining the effectiveness of the human rights mechanisms, which should not be as failed as the justice mechanism of Bangladesh in protecting the victims of torture and other forms of violation of rights.